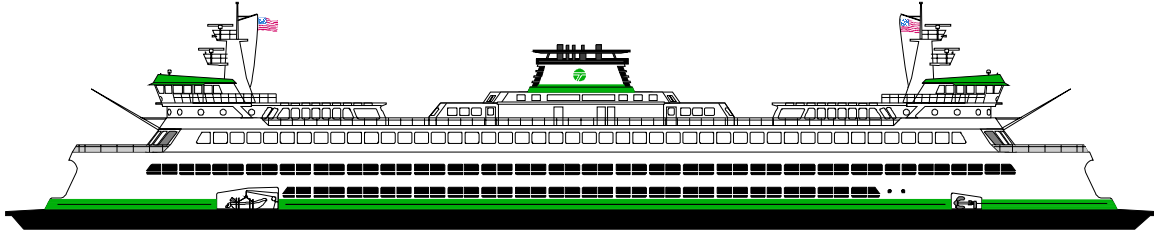


PART 10

CONTRACTS



WASHINGTON STATE FERRIES

WASHINGTON STATE DEPARTMENT OF TRANSPORTATION

NEWS, BOOKS & CONVENIENCE CONCESSION CONTRACT

JANUARY 2004

WASHINGTON STATE FERRIES

NEWS, BOOKS & CONVENIENCE CONCESSION CONTRACT

JANUARY 2004

**WASHINGTON STATE FERRIES
NEWS, BOOKS & CONVENIENCE
CONCESSION CONTRACT**

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WASHINGTON STATE FERRIES

NEWS, BOOKS & CONVENIENCE CONCESSION CONTRACT

1 **THIS CONTRACT** is made and entered into this ____ day of _____,
2 2003, between **WASHINGTON STATE FERRIES**, a division of the Washington State
3 Department of Transportation (hereinafter called "**WSF**") and
4 _____, an independent contractor (hereinafter
5 called the "**CONCESSIONAIRE**").

6 7 **WITNESS THAT:**

8
9 **WHEREAS**, **WSF** owns and operates the largest ferry system in the United States,
10 including twenty-four (24) auto ferries and five (5) passenger-only ferries serving twenty
11 (20) terminals in Puget Sound, Washington and Sidney, British Columbia, all as an integral
12 part of the Washington State highway system; and

13
14 **WHEREAS**, **WSF** desires to contract with a qualified **CONCESSIONAIRE** to
15 provide news, books and convenience store service at **WSF** terminals; and

16
17 **WHEREAS**, pursuant to authorization in Revised Code of Washington (RCW)
18 47.60.140 and 47.56.030, **WSF** sought competitive proposals for such concession service
19 and, following evaluation of _____ (____) proposals, selected the **CONCESSIONAIRE'S**
20 Proposal as the one most advantageous to **WSF**; and

21
22 **WHEREAS**, the **CONCESSIONAIRE** is duly authorized and qualified to provide
23 the desired concession service and has signified its capability and willingness to provide such
24 service as an independent contractor in accordance with (i) the terms of this Contract; (ii) the
25 **CONCESSIONAIRE'S** Financial Proposal, by this reference incorporated herein as Exhibit
26 "A"; (iii) the **CONCESSIONAIRE'S** Concept / Service Proposal, by this reference
27 incorporated herein as Exhibit "B"; and (iv) **WSF's** project Request For Proposals, including

1 all Addenda thereto (hereinafter called "RFP") by this reference incorporated herein as
2 Exhibit "C".

3
4 **NOW, THEREFORE**, in consideration of the terms, conditions, covenants, and
5 performances contained herein or attached, incorporated and made a part hereof, the parties
6 hereto agree as follows:

7
8
9 **I.**
10 **DESCRIPTION OF PREMISES**
11

12 A. **WSF** hereby allocates to the **CONCESSIONAIRE**: (i) certain concession and
13 warehouse space at **WSF**-approved locations at ferry terminals owned (or leased) and
14 operated by **WSF**, all as more specifically described below. The amount of
15 concession space allocated to the **CONCESSIONAIRE** will vary from location to
16 location depending on available space and market conditions. All such concession
17 space is subject to pre-approval in writing by **WSF**. The actual concession spaces
18 approved by **WSF** at all such **WSF** locations, both individually and collectively, are
19 hereinafter referred to as the "Concession Premises". For diagrams and drawings of
20 the Concession Premises, please see RFP Volume II, Exhibits.

21
22 1. **Colman Dock**

23 The future Concession Premises at the Colman Dock – Pier 52 Ferry Terminal
24 in downtown Seattle, King County, Washington shall consist of:

25
26 **Future News, Books, and Convenience Store at Colman Dock**

- 27
 - Approximately 2,600 square feet
 - Located on the passenger deck (upper) level

28
29
30 **Storage**

- 31
 - 300 square feet
 - Located on the vehicle deck level

32
33
34 **Other**

- 35
 - No on-dock parking is available
 - No on-site office space is available

1
2 2. **Anacortes**

3 The existing Concession Premises at the Anacortes Ferry Terminal in Skagit
4 County, Washington consist of:

5
6 **Existing News and Gift shop**

- 7 • Approximately 132 square feet
8 • Located in the Terminal building
9

10 **Storage**

- 11 • Approximately 120 square feet
12 • Located in adjacent building
13

14 3. **Other Terminals**

15 The potential for future Concession Premises at the other WSF Ferry
16 Terminals shall be as provided in the RFP Specifications:
17

18 B. Upon the **CONCESSIONAIRE'S** request, **WSF** shall provide any necessary
19 clarification regarding components of the terminal Concession Premises.
20

21 C. Upon the **CONCESSIONAIRE'S** request, **WSF** may, in its sole discretion, allocate
22 and authorize (i) an expansion of the Concession Premises at any of its terminals;
23 subject to space availability and approval in writing by **WSF**.
24

25 D. **WSF**, may, upon fifteen (15) days' prior written notice, reduce, increase, eliminate, or
26 otherwise change any of the Concession Premises allocated to the
27 **CONCESSIONAIRE** if **WSF** determines that such modification is necessary in
28 order to meet **WSF** operational requirements or better serve the traveling public.
29

30 E. The **CONCESSIONAIRE** accepts the Concession Premises in their present
31 condition, after removal of trade fixtures and other personal property of **WSF'S**
32 predecessor food service concessionaire (at the Colman Dock and Anacortes Ferry
33 Terminals). The condition of the Concession Premises shall be verified by the
34 **CONCESSIONAIRE'S** inspection of the Premises prior to the commencement of
35 this Contract.
36
37

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3 **II.**
4 **USE OF PREMISES**

- 5 A. **WSF** authorized the **CONCESSIONAIRE** to use the terminal Concession Premises
6 for installation of news, books and convenience stores or concepts for **WSF**
7 customers. Such uses are detailed in the RFP Specifications, but generally include:
8 A variety of local and national newspapers; a wide selection of magazines and
9 periodicals; a large selection of hardback and paperback novels including the top
10 twenty (20) national best sellers; an assortment of other types of books in popular
11 reading categories such as travel and cooking; a selection of sundry items appealing
12 to both commuter and tourist travelers; packaged snacks and candies; bottled water
13 and other bottled drinks; a selection of popular over the counter medicines; a
14 selection of gourmet take-out items suitable for breakfast, lunch, and snacks; hot
15 coffee (espresso drinks are excluded), and a selection of souvenir items including
16 **WSF** branded shirts, haps, mugs, and other items appealing to tourists.
17
18 B. **WSF** may, in its sole discretion, authorize the **CONCESSIONAIRE** to establish
19 other directly-related concession services, all subject to space availability and
20 approval in writing by **WSF**. **WSF** may also request that the **CONCESSIONAIRE**
21 provide such additional concession services, subject to the provisions in Article V.C
22 herein.
23
24 C. The Concession Premises shall be used only for providing the concession services
25 authorized herein. Other commercial or non-commercial activities, or use and
26 occupancy by other parties of the Concession Premises, are prohibited unless
27 approved in advance and in writing by **WSF**.
28
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III.
TERM

5 A. This Contract shall be in force for a term of approximately ten (10) years,
6 commencing at 12:01 a.m. on January 1, 2004, and expiring at 12:00 a.m. (midnight)
7 on January 3, 2014.

8
9 **B. Holding Over**

10 If **WSF** desires to maintain the concession services described herein at **WSF**
11 locations following expiration of this Contract, **WSF** shall make a good faith effort to
12 seek competitive proposals, and award and execute a successor Contract prior to the
13 expiration of this Contract. However, if **WSF** fails to timely execute such a successor
14 contract and the **CONCESSIONAIRE** continues in performance of the services
15 described herein with **WSF's** consent, the resulting tenancy shall be on a month-to-
16 month basis unless the parties agree otherwise in writing. Such month-to-month
17 tenancy shall be governed by the Contract terms and conditions in effect immediately
18 prior to such expiration, unless the parties agree otherwise in writing.
19
20

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23

IV.
INDEPENDENT CONTRACTOR

24 A. The parties declare that the **CONCESSIONAIRE** and its employees, while
25 performing this Contract, are acting as independent contractors and not in any manner
26 as officers or employees of **WSF**. Any and all claims that might arise under any
27 Workmen's Compensation Act or Longshore and Harbor Worker's Act on behalf of
28 such employees or other persons under the **CONCESSIONAIRE'S** direction or
29 control, while performing any of the work or services described herein, shall be the
30 sole obligation and responsibility of the **CONCESSIONAIRE**.

31
32 B. As an independent contractor, the **CONCESSIONAIRE** shall coordinate with **WSF**
33 on issues affecting **WSF** operations and maintenance, as specified herein and in the
34 RFP, such as, but not limited to: transitioning from the former concessionaire,
35 scheduling issues regarding customer service, construction or remodeling, financial
36 and sales reporting, and product storage. While agreeing to coordinate with **WSF**, the

1 **CONCESSIONAIRE** shall remain solely responsible for its employee relations as
2 well as its own labor relations, as required by law. Therefore, this agreement to
3 coordinate efforts shall not create a joint-employer relationship between **WSF** and the
4 **CONCESSIONAIRE**, or any subcontractor, franchisee, or licensee operating under
5 this Contract.

6
7

8

9

**V.
EXCLUSIVE FRANCHISE**

10

11 A. Subject to the provisions in Paragraph C below, the **CONCESSIONAIRE** shall have
12 the exclusive right to provide: (i) the food and beverage service defined herein on the
13 terminal Concession Premises, as follows:

14

15 1. Rights to operate News, Books and Convenience (NBC) Stores at **WSF'S**
16 Colman Dock and Anacortes Ferry Terminals.

17

18 2. Rights to develop and operate new NBC concepts and facilities at other **WSF**
19 terminals subject to agreement by **WSF**.

20

21 3. Rights to develop and operate NBC concepts and services within vehicle
22 holding areas and waiting lines at **WSF** terminals subject to agreement by
23 **WSF**.

24

25 4. Rights to develop sub-contract relationships with local and seasonal
26 businesses to assist in offering NBC concepts and services subject to
27 agreement by **WSF**.

28

29

1
2 B. **WSF** encourages the **CONCESSIONAIRE** to:

- 3
4 1. Develop NBC offerings that provide a balance of local and national brands,
5 and featuring local businesses, brands and products whenever possible; and
6
7 2. Engage, sub-contract, franchise or license to / from other businesses to
8 provide a variety of NBC services, concepts and local involvement under this
9 Contract.

10
11 C. If **WSF** requests, in writing, that the **CONCESSIONAIRE** provide certain additional
12 concession services pursuant to this Contract, whether or not specifically described
13 herein, and if the **CONCESSIONAIRE** fails to commence such concession services
14 within thirty (30) calendar days after receipt of the written request, **WSF** may
15 immediately terminate the **CONCESSIONAIRE'S** franchise rights, if any, for those
16 additional concession services only. In such event, **WSF** may itself provide or
17 contract for the provision of those additional concession services.

18
19
20 **VI.**
21 **SCOPE OF SERVICES**

22
23 A. The **CONCESSIONAIRE** shall:

- 24
25 1. Provide news, books and convenience store service (as authorized herein) on
26 the Concession Premises in accordance with the **CONCESSIONAIRE'S**
27 Proposal and the RFP. Deviation from the Proposal or the RFP, in any
28 manner, shall be permitted only with the express consent of the authorized
29 **WSF** representative.
30
31 2. Obtain **WSF'S** approval of the concession facilities' design, size,
32 improvements (including equipment, fixtures and furnishings) prior to any
33 modification / renovation of the Concession Premises, and be solely
34 responsible for all damages, direct and consequential, resulting from the
35 **CONCESSIONAIRE'S** failure to obtain such approval.
36

3. Obtain **WSF's** approval for the **CONCESSIONAIRE'S** proposed food and beverage menu, general merchandise, other miscellaneous products and services, customer prices and product quality, for all concession services, prior to commencement of operations under this Contract. Food and beverage products must be first quality and meet all applicable Health Department regulations.
4. Provide exceptional customer service combined with the goal of achieving business success. The **CONCESSIONAIRE** shall tailor concession concepts, capital investments and staff levels to meet varying business needs and hours of service.
5. Accept credit card and debit card transactions.
6. Adhere to **WSF's** street pricing requirement. The **CONCESSIONAIRE** and **WSF** will select three (3) sites providing comparable products and services. After the initial pricing approval, **WSF** may review such products, services, prices, quality, etc. then in effect and if they do not fall within the range of the comparable facilities, **WSF** will require adjustments.
7. Ensure that deliveries to and from the Concession Premises are done in a manner and at times that will minimize interference with **WSF** vessel and terminal operations. The **CONCESSIONAIRE** shall ensure that delivery vehicles do not park at terminals longer than the actual time required for pick-up and delivery.
8. Comply with: (i) all federal, state and local statutes, ordinances, regulations and rules pertaining to the **CONCESSIONAIRE'S** operations hereunder, including but not limited to applicable Washington State Department of Health rules, regulations and standards; and (ii) all proper orders of authorized federal, state and/or municipal officers.

9. Coordinate with **WSF'S** authorized representative: (i) concession operational requirements; (ii) Contract compliance; and (iii) other administrative requirements, as needed, to ensure smooth operation of the concession services. Such coordination is important to avoid any potential conflict with **WSF** terminal and vessel operations or with **WSF** customers.

VII.

HOURS OF OPERATION AND MARKETING

A. Hours of Operation

The **CONCESSIONAIRE** shall provide news, books and convenience store service at **WSF** terminals during the hours and at those service levels specified in the **CONCESSIONAIRE'S** Proposal and approved by **WSF**; and thereafter specified in seasonal operating schedules to be approved in advance by **WSF**, as detailed below. The **CONCESSIONAIRE** may not adjust the approved service hours and levels without the prior written consent of **WSF**.

B. Operating Plan

1. Sixty (60) days prior commencement of **WSF'S** peak season operating schedule, and sixty (60) days prior commencement of **WSF'S** non-peak season operating schedule, the **CONCESSIONAIRE** shall submit to **WSF** a proposed operating plan to include its proposed services and hours of operation for the upcoming **WSF** sailing season. **WSF** may approve the plan as submitted, or seek agreement on adjustments thereto.
2. At the same time as submittal of its seasonal operating plan, the **CONCESSIONAIRE** shall present, on a prospective basis, its plan for a one (1) year period following the end of the operating season under review.

1
2 3. The **CONCESSIONAIRE** shall develop all seasonal and long range
3 operating plans at its sole expense.
4

5 4. If the parties cannot agree on a seasonal or long-range operating plan, **WSF**
6 may direct the **CONCESSIONAIRE** to implement an alternative plan
7 affecting service hours, products, services and/or prices. If the
8 **CONCESSIONAIRE** is unable or unwilling to comply with such direction,
9 **WSF** may immediately terminate the **CONCESSIONAIRE'S** rights to the
10 specific concession service under review. Thereafter, **WSF** may contract with
11 a third party for alternative food and beverage service at the affected service
12 location(s), if **WSF** deems appropriate for its customer service. In such event,
13 **WSF** shall not be liable to the **CONCESSIONAIRE** for any damages
14 whatsoever, and the concession fees payable under this Contract shall be
15 effective for the remaining concession services under this Contract.
16

17 C. **Marketing Plan**
18

19 Sixty (60) days prior commencement of **WSF'S** peak season operating schedule, and
20 sixty (60) days prior commencement of **WSF'S** non-peak season operating schedule,
21 the **CONCESSIONAIRE** shall submit to **WSF** a proposed marketing plan, to include
22 a promotions calendar and seasonal marketing concepts. **WSF** may approve the plan
23 as submitted or seek agreement on adjustments thereto. At the same time, the
24 **CONCESSIONAIRE** shall present, on a prospective basis, its marketing plan for a
25 one (1) year period following the end of the operating season under review. The
26 **CONCESSIONAIRE** shall develop all such seasonal and long range marketing plans
27 at its sole expense.
28
29

VIII.
IMPROVEMENTS TO PREMISES

A. The **CONCESSIONAIRE** shall:

1. Except as provided below for Colman Dock, be responsible for the construction of all capital improvements, furniture and fixtures necessary to bring all Concession Premises and facilities into a fully operable condition.
2. Upon **WSF's** request and / or approval, make capital improvements to the Concession Premises. The capital improvements are defined in Paragraphs B and C of this Article, and shall become **WSF's** property upon installation.
3. Obtain **WSF'S** approval of proposed modifications to the Concession Premises prior to initial design and construction, and thereafter make no alterations without **WSF's** prior, written approval. All such alterations shall become part of the Concession Premises, and shall become **WSF's** property upon the expiration or earlier termination of this Contract unless otherwise provided in a written agreement between the parties. Design and finish materials for all capital improvements must be pre-approved by **WSF**.
4. Be responsible for the procurement, installation and maintenance of improvements (including equipment, fixtures and furnishings) to the Concession Premises, except any improvements which **WSF** has previously or hereafter agreed, in writing, to provide, install and/or maintain. In purchasing such improvements or operating inventory, the **CONCESSIONAIRE** shall not use the name or credit of **WSF**.
5. Annually, on a mutually agreeable schedule, submit to **WSF** a complete written inventory of all improvements made to the Concession Premises during the preceding calendar or fiscal year. **WSF** shall have the right to tag its property for inventory purposes.

1
2 B. The capital improvements described herein include, but are not limited to: food
3 service and other concession equipment; furnishings and decor items; remodeling
4 (structural, electrical, plumbing, etc., including any necessary code compliance
5 work); signage; and any other improvements approved in advance by **WSF**.

6
7 C. The capital improvements described herein do not include the cost of: (i) operating or
8 other inventory (e.g., cash registers, utensils, smallwares, tools, expendable
9 equipment), except as otherwise approved by **WSF**; and (iii) personal property of the
10 **CONCESSIONAIRE** which is removable without causing damage to the
11 Concession Premises or any other **WSF** property or facilities thereon, and which the
12 **CONCESSIONAIRE** is entitled to remove under ArticleXXX.A.2. herein.

13
14 D. **Colman Dock**

15 New concession facilities on the passenger / upper level at Colman Dock will require
16 a complete build-out. At the commencement of this Contract, the Concession
17 Premises are provided in a minimum “Vanilla Shell” condition, which includes frame
18 demising walls, concrete slab flooring, unfinished ceiling, and utilities to the
19 perimeter of the space or a designated distribution point.

20
21 All capital improvements to the Concession Premises on the passenger / upper level
22 at Colman Dock must meet or exceed a minimum development cost of \$150.00 per
23 square foot. **WSF** will contribute a capital improvement allowance of \$50.00 per
24 square foot towards capital improvements to the Colman Dock passenger / upper
25 level (approximately 2,580 s.f. x \$50.00 = \$129,000). The **CONCESSIONAIRE**
26 will pay all remaining improvement costs. **WSF** will pay its capital improvements
27 allowance directly to the **CONCESSIONAIRE**..

28
29 E. There will be no capital improvement allowance for construction of kiosks or carts in
30 the vehicle holding areas at any **WSF** terminal.

31
32 F. All facilities on the Concession Premises must be designed to meet all local, state,
33 and federal building code requirements, including the Americans with Disabilities
34 Act standards.

IX.
PERSONNEL

A. The **CONCESSIONAIRE** shall:

1. Provide adequate personnel to staff the concession facilities so as to rapidly service waiting customers. Such personnel shall: (i) remain the employees of the **CONCESSIONAIRE** only; and/or (ii) be subject to the **CONCESSIONAIRE'S** exclusive supervision, direction and control.
2. Ensure that its concession personnel provide courteous and efficient service at all times. Such personnel shall conduct themselves in a proper manner at all times while on the Concession Premises or other **WSF** property, with a high regard for their own safety and for the comfort and safety of all others on such Premises or property.
3. Ensure that its employees, while on duty, wear clean, neatly pressed attire appropriate for the services provided. The **CONCESSIONAIRE** shall submit the color and design of employee uniforms to **WSF** for prior approval. The cost of such uniforms, including laundering, shall be the sole responsibility of the **CONCESSIONAIRE** and/or its employees.

B. **WSF** reserves the right to approve, in advance, the suitability of all **CONCESSIONAIRE** management personnel assigned to the concession operations under this Contract. The **CONCESSIONAIRE** shall notify **WSF** in advance of the transfer of any on-site management personnel assigned to this Contract.

C. Safety and security are a primary concern on **WSF** vessels, at its terminals and in the vehicle holding areas. With the increased emphasis being placed on security by our nation, **WSF** has established safety and security procedures and expects that security measures and attendant procedures in particular will change over the term of this Contract. These changes may affect the **CONCESSIONAIRE'S** operations and employees. **WSF** will make reasonable efforts to minimize negative business impacts to the **CONCESSIONAIRE** when possible. Some specific considerations include:

1. **WSF** training is meant to augment, not supplant, the **CONCESSIONAIRE'S** own efforts in training and maintaining proper safety and emergency procedures for its employees.
2. To the extent that any federal, state or local rule or regulation requires safety or security training for the **CONCESSIONAIRE'S** employees, the **CONCESSIONAIRE** shall be solely responsible for securing such training and the costs related thereto.

X. MAINTENANCE AND REPAIRS

A. The CONCESSIONAIRE shall:

1. Maintain all Concession Premises and operating equipment in a clean and sanitary condition to **WSF's** satisfaction.
2. Continuously pick up and dispose of all paper, trash, garbage, and other waste resulting from its operations, and make arrangements for prompt and sanitary disposal of all such waste. Until disposal, all waste shall be stored in sealed containers procured by the **CONCESSIONAIRE** and located on the Concession Premises or an alternate location approved by **WSF**. The **CONCESSIONAIRE** shall not dump any waste into Puget Sound or adjacent waters under any circumstances.
3. Be responsible for a proportional share of the cost of: (i) dumpster procurement, repair and replacement; and (ii) scheduled pick-up / disposal services for such dumpsters, at all **WSF** terminals, unless otherwise agreed to between **WSF** and the **CONCESSIONAIRE**. Proportional share shall be based upon the estimated quantity of trash, garbage and other waste deposited in the dumpsters by authorized users.

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- 4. Maintain and repair all terminal Concession Premises and operating equipment in accordance with: (i) applicable building codes, Health Department regulations and other applicable rules and regulations; and (ii) instructions issued by authorized **WSF** personnel. Prior to conducting any maintenance or repair to the terminal Concession Premises, contact the **WSF** Terminal Agent on duty and obtain written permission to proceed. Upon completion, obtain review and approval by **WSF**.

- 5. Immediately carry out all written requests by authorized **WSF** personnel to correct **CONCESSIONAIRE** deficiencies in safety or sanitation. Such deficiencies not immediately remedied may be corrected by **WSF** at the expense of the **CONCESSIONAIRE**.

B. **WSF** will not tolerate any condition on the Concession Premises that has an adverse effect on personal safety. Accordingly, the **CONCESSIONAIRE** shall be solely responsible for the prompt maintenance and repair of everything on the Concession Premises to the satisfaction of **WSF**. For example, maintenance of all equipment, fixtures, signs, floor coverings and ceiling tiles on the Concession Premises shall be the **CONCESSIONAIRE'S** responsibility. Additionally, when interior or exterior walls form a segment of the Concession Premises' decor, then maintenance of such interior or exterior surfaces shall be the **CONCESSIONAIRE'S** responsibility.

XI.
UTILITIES

A. Terminal Buildings

Except as provided herein, **WSF** will contract for the installation of the basic utility systems to serve the Concession Premises developed in existing **WSF** buildings (e.g., Colman Dock and Anacortes terminals). Such utility systems shall include, but are not limited to: available water and electricity; and heating and air conditioning (if pre-existing).

The **CONCESSIONAIRE** shall be solely responsible for furnishing all other utility systems to such Concession Premises, including telephone lines, garbage service and any other desired utility service.

WSF shall not be liable whatsoever for any interruption of utility service to the Concession Premises.

1. On the passenger / upper level at the Colman Dock Ferry Terminal, the **CONCESSIONAIRE**, at its sole expense, shall separately meter, pay for and maintain any / all utility services provided by **WSF** to the Concession Premises. ,

B. Kiosks / Carts

The **CONCESSIONAIRE** shall be solely responsible for furnishing and maintaining all utility systems serving any / all food and beverage kiosks or carts in the vehicle holding areas at **WSF** terminals, as may be authorized by **WSF**.

- C. The **CONCESSIONAIRE'S** utility usage shall be limited to that necessary to perform the provisions of this Contract. Any changes that may be required in any utility system provided to the Concession Premises to fulfill the purpose of this Contract and provide the services required herein must be approved in advance by **WSF**.

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XII.
ENTRY FOR INSPECTION

- A. The **CONCESSIONAIRE** shall permit any duly authorized **WSF** personnel or consultants, or any duly authorized federal, state or municipal officer to enter onto the Concession Premises at all reasonable times, and without prior notice, for: (i) inspection of the Premises for operations, safety or sanitation; (ii) maintenance, repair or construction work; (iii) response to fire or other emergency; and (iv) conducting service / performance audits and verification of Contract compliance.
- B. **WSF** shall not be liable for any claim for loss, damage, inconvenience or interruption of business arising from any of the above-referenced inspection activities. Further, the right of inspection reserved hereunder shall impose no obligation on **WSF** to make inspections and shall impose no liability upon **WSF** for failure to do so.

XIII.
SIGNS AND ADVERTISING

- A. The **CONCESSIONAIRE** shall be required to install standard concession identification signs, menu boards, and notices (electrical or otherwise) on the Concession Premises; **Provided**, the **CONCESSIONAIRE** shall not install any sign, menu board or notice without obtaining **WSF'S** prior approval as to its design, message and location. Installations at any other terminal locations shall be within **WSF'S** sole discretion.
- B. No promotion or trade stimulation materials of any kind, including but not limited to any brochure, map, flyer, sign or insignia, shall be displayed, distributed or placed upon the Concession Premises without **WSF'S** prior approval.

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XIV.
ACCESS TO PREMISES

- A. Subject to the conditions specified herein, the **CONCESSIONAIRE** shall have unrestricted access to the Concession Premises as necessary to fulfill the terms of this Contract; **Provided**, such rights shall not be exercised in such manner and to such extent as to: (i) impede or interfere with the operation of **WSF** terminals and vessels or business conducted by other **WSF** concessionaires or authorized occupants; or (ii) violate any lease or agreement entered into between **WSF** and a third party.
- B. Subject to: (i) availability of parking, and (ii) the prior approval of the appropriate Terminal Agent, **WSF** shall permit the **CONCESSIONAIRE'S** service vehicles to park free at **WSF** terminals, but only for the minimum time necessary for the **CONCESSIONAIRE'S** delivery / pick-up of products and supplies for its concession operations, or maintenance or repair of the Concession Premises.

XV.
VESSEL PASSES AND PARKING

- A. **Vessel Passes**
- In the performance of this Contract, there are no passes authorized for free vehicle or walk-on passage on any **WSF** vessel. This policy applies to the **CONCESSIONAIRE'S** employees and supervisory personnel working at any of the Concession Premises, regardless of location.
- B. **Parking**
- Generally, there is no parking at any **WSF** terminal for **CONCESSIONAIRE** personnel. However, subject to space availability and demonstrated need, **WSF** may authorize a limited number of parking spaces for the **CONCESSIONAIRE** at the Anacortes Ferry Terminal.

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XVI.
PROTECTION OF PROPERTY AND SAFETY

A. The **CONCESSIONAIRE** shall:

1. At its sole expense, provide protection for its own property at all times, including inventory, fixtures, and equipment. **WSF** shall have no responsibility for protection of the **CONCESSIONAIRE'S** property, or any liability for loss or theft thereof.
2. At no time permit any fire hazards to exist in regard to wiring of the concession facilities and equipment, or through the accumulation of waste or refuse on or adjacent to the Concession Premises; and immediately report to **WSF** fires or unsafe conditions on the Concession Premises.
3. At no time permit liquids or other substances of a slippery or dangerous nature arising from its operations to accumulate anywhere such substances might result in accident or injury to the **CONCESSIONAIRE'S** or the **WSF'S** patrons and/or employees.
4. Inspect and maintain the Concession Premises to prevent loss or damage to **WSF** or other non-**CONCESSIONAIRE** property, or accident or injury arising from the **CONCESSIONAIRE'S** operations. If any intentional or negligent defacement or damage of **WSF** property is caused by the **CONCESSIONAIRE**, its employees or subcontractors, the cost of repair shall be the sole responsibility of the **CONCESSIONAIRE**.

XVII.
DAMAGE TO PREMISES

A. If, during the Contract term, the Concession Premises or any **WSF** terminal of which the Concession Premises are a part is damaged by fire or other casualty not occurring through the **CONCESSIONAIRE'S** performance of this Contract, and if such damage is repairable within a reasonable time and at a reasonable cost, **WSF** and the **CONCESSIONAIRE** shall repair such damage to their respective property, with due diligence, and this Contract shall not be affected thereby.

B. If, during the Contract term, the Concession Premises or any **WSF** terminal of which the Concession Premises are a part is damaged by fire or other casualty not occurring through the **CONCESSIONAIRE'S** performance of this Contract, and if such damage is so extensive that it cannot be repaired within a reasonable time and at a reasonable cost, **WSF** shall have the option to terminate this Contract as to the Concession Premises at such damaged terminal upon thirty (30) days' prior written notice, effective as of a date not more than sixty (60) days after the occurrence. If **WSF** shall fail to timely notify the **CONCESSIONAIRE** of its election, then, unless the parties agree otherwise, this Contract shall automatically terminate as to such Concession Premises sixty (60) days after the occurrence of the damage.

In the event of such termination, with or without notice: (i) the **CONCESSIONAIRE** shall immediately surrender the subject Concession Premises to **WSF**; (ii) **WSF** shall have no liability to the **CONCESSIONAIRE** for any lost profits or interruption / loss of business resulting from such termination; and (iii) this Contract shall remain in full force and effect as to the remainder of the Concession Premises.

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XVIII.
CHANGES TO PREMISES AND VESSEL SERVICE

A. Changes to Concession Premises

1. **WSF** has a primary obligation to operate the **WSF** for the benefit of its customers and their vehicles. In order to accomplish this obligation, it may be necessary for **WSF**, at some time or times during the term hereof, to make changes in the Concession Premises. If and when such changes become necessary, the parties will mutually cooperate in implementing such changes in order to minimize any disruption in **WSF** or **CONCESSIONAIRE** operations.
2. **WSF** shall not be liable for any **CONCESSIONAIRE** loss, damage, inconvenience or interruption of business arising from: (i) changes to the Concession Premises as deemed necessary by **WSF**; (ii) asbestos removal at any **WSF** terminal; (iii) the remodel or refurbishment of any ferry terminal; and/or (iv) any other improvements / renovations whether or not they are associated with **WSF** actions.

B. Changes in Vessel and Routes

1. In the event **WSF** is prevented from maintaining its vessel sailing schedules or providing operational Concession Premises due to strike, riot, weather, vessel break-down or repair, security measures, or any other causes whatsoever, **WSF** shall not be liable for any damage, loss or increase in operating cost sustained by the **CONCESSIONAIRE** by reason thereof. **WSF** also reserves the right, without liability for any damage, loss or increase in operating cost, to discontinue, increase or reduce the operation of its terminals and vessels at any time or times as it may see fit. **WSF** may also substitute another vessel or vessels in place of any one or more of its vessels on any route.

- 1
- 2 2. **WSF** will use reasonable best efforts to promptly notify the
- 3 **CONCESSIONAIRE** of any such changes in terminal and/or vessel
- 4 operations. Despite any and all such changes in service and possible lack of
- 5 notice to the **CONCESSIONAIRE**, the **CONCESSIONAIRE** shall remain
- 6 obligated to provide the concession services defined herein to the extent that it
- 7 remains possible to do so.
- 8

9 **C. Future Capital Projects**

10

11 1. **Colman Dock –Pier 52 Ferry Terminal**

12

13 The Colman Dock – Pier 52 Ferry Terminal is scheduled for replacement

14 within the next ten (10) years. Currently, construction is planned to start

15 during the 2007-2009 Biennium with completion scheduled during the 2011-

16 2013 Biennium. The planning is in a preliminary stage and these dates

17 represent the earliest start and completion dates for a complex project with

18 significant regulatory and environmental requirements.

19

20 During construction, the Terminal will not close but there may be disruptions.

21 **WSF** will make reasonable efforts to keep concessions in operation during the

22 construction period, minimize negative business impacts on the

23 **CONCESSIONAIRE** when reasonably possible, and provide comparable

24 locations in the new facility when construction is completed. In the event that

25 **WSF** determines the Concession Contract must be terminated to allow for the

26 construction activity, **WSF** will reimburse the **CONCESSIONAIRE** for the

27 unamortized asset value of agreed initial capital improvements (i.e.,

28 constructed or installed during first Contract year), amortized on a straight-

29 line basis over the full Contract term.

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2 2. **Alaskan Way Viaduct**
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4 The Alaska Way Viaduct, an elevated highway, borders the Colman Dock
5 Terminal to the east. The Viaduct is slated for replacement to begin within
6 the period of this Contract. This is a very complex project in the early stages
7 of planning and with many uncertainties. The Colman Dock Ferry Terminal
8 will remain in operation throughout any construction period but the
9 surrounding area could be subject to construction zone conditions.

10
11 WSF will not be liable to the **CONCESSIONAIRE** for any damages
12 whatsoever arising from any disruption in customer access or reduced
13 revenues resulting from the Alaskan Way Viaduct project.
14

15 3. **Anacortes Ferry Terminal**
16

17 The Anacortes Ferry Terminal is scheduled for replacement within the next
18 ten (10) years. Currently, construction is planned to start during the 2007-
19 2008 Biennium. The planning is in a preliminary stage and these dates
20 represent the earliest start dates for a complex project with significant
21 regulatory and environmental requirements. An expanded retail concession
22 presence is planned for the new facility.
23

24 During construction, the Terminal will not close but there may be disruptions.
25 **WSF** will make reasonable efforts to keep concessions in operation during
26 any construction period, minimize negative business impacts on the
27 **CONCESSIONAIRE** when reasonably possible, and provide comparable
28 locations in the new facility when construction is completed. In the event that
29 **WSF** determines the Concession Contract must be terminated to allow for the
30 construction activity, WSF will reimburse the **CONCESSIONAIRE** for the
31 unamortized asset value of agreed initial capital improvements (i.e.,
32 constructed or installed during first Contract year), amortized on a straight-
33 line basis over the full Contract term.
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XIX.
ASSIGNMENT, SUB-CONTRACT

A. General

Notwithstanding the provisions of Paragraph B of this Article, the **CONCESSIONAIRE** shall not assign, delegate or transfer this Contract, or the obligations incurred hereunder, in whole or in part, by operation of law or otherwise, or sub-contract for the management or operation of the concession facilities authorized herein, or parts thereof, without **WSF's** prior written approval. Such approval shall not operate to relieve the **CONCESSIONAIRE** of any of its duties and obligations hereunder, unless specified by **WSF** in writing; nor shall such approval affect any remedies available to **WSF** that may arise from non-performance of the Contract.

B. Subcontracted Services

If **WSF** authorizes the **CONCESSIONAIRE** to subcontract any concession services under this Contract, the **CONCESSIONAIRE** and the subcontractor shall abide by the applicable service provisions in the RFP and this Contract. The subcontractor shall indicate such willingness in writing. For all subcontracted services, the **CONCESSIONAIRE** shall pay **WSF** the same concession fees applicable to non-subcontracted services, in accordance with the concession fee schedule specified in Article XXIV herein.

C. M/WBE Participation

This Contract has voluntary goals for participation by Minority Business Enterprises (MBE's) and Women's Business Enterprises (WBE's) in the purchase of products, supplies and/or services. The goals are voluntary, but achievement of the goals is encouraged. The participation goals are as follows:

1. Ten percent (10%) to State-certified MBEs, based upon the **CONCESSIONAIRE'S** annual expense for the procurement of products, supplies and/or services; and

2. Six percent (6%) to State-certified WBEs, based upon the **CONCESSIONAIRE'S** annual expense for the procurement of products, supplies and/or services.

WSF shall monitor the **CONCESSIONAIRE'S** compliance with the MBE and WBE goals to ascertain level of achievement and demonstrated good faith effort.

XX.

TAXES AND ASSESSMENTS

A. The **CONCESSIONAIRE** shall be liable for, and shall pay throughout the term of this Contract: (i) all taxes (e.g., sales tax) payable for or on account of the retail sales generated under this Contract; (ii) all taxes (including personal property tax, B & O tax, leasehold tax and any other such taxes), assessments and license fees, if any, payable for or on account of the **CONCESSIONAIRE'S** use and occupancy of the Concession Premises; (iii) all taxes on the **CONCESSIONAIRE'S** equipment installed on **WSF** property pursuant to this Contract; and (iv) any taxes levied on, or measured by, the concession fees payable hereunder.

B. The **CONCESSIONAIRE** shall reimburse **WSF** for all such taxes paid or payable by **WSF**. With respect to any tax on the concession fee payments hereunder, the **CONCESSIONAIRE** shall pay to **WSF** with each fee payment an amount equal to such tax on that particular payment. All other tax amounts for which **WSF** is or will be entitled to reimbursement from the **CONCESSIONAIRE** shall be payable by the **CONCESSIONAIRE** to **WSF** at least fifteen (15) calendar days prior to the due dates of the respective tax amounts involved.

C. Notwithstanding the foregoing, the **CONCESSIONAIRE** shall have the right to challenge any levied taxes or assessments relating to the services provided pursuant to this Contract.

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2 **XXI.**

3 **CONTRACT SECURITY**
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- 5 A. The **CONCESSIONAIRE**, at its own expense, shall deliver to **WSF** and maintain in
6 good standing throughout the term of this Contract, and for sixty (60) days thereafter,
7 Contract Security in the form of a surety Contract Bond or an Irrevocable Letter of
8 Credit (ILOC) in the amount of _____ Dollars (\$_____)
9 covering the **CONCESSIONAIRE'S** performance and payment obligations under
10 this Contract, and issued by a State-approved, properly licensed surety company or
11 bank, respectively, on a form acceptable to **WSF**.
12
- 13 B. Notwithstanding such Contract Security, the **CONCESSIONAIRE** shall not be
14 relieved of, and shall reimburse **WSF** for, any loss or additional expense incurred by
15 **WSF** as a result of the **CONCESSIONAIRE'S** default or failure to satisfactorily
16 perform the terms of this Contract, including a sum for reasonable attorney's fees if
17 litigation shall be instituted hereon and **WSF** prevails in such litigation or on appeal.
18
- 19 C. If the **CONCESSIONAIRE** substantiates to the satisfaction of **WSF** that the
20 Contract Bond or ILOC required herein is unattainable or is less comprehensive than
21 alternate security proposed by the **CONCESSIONAIRE**, **WSF** may, in its sole
22 discretion, authorize the **CONCESSIONAIRE** to procure and maintain substitute
23 security acceptable to **WSF**.
24
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XXII.
INSURANCE

A. At its sole expense, the **CONCESSIONAIRE** shall procure the insurance required under "Types of Insurance" in this Article. Such insurance shall cover injury to persons and/or property suffered by **WSF** or a third party, as a result of performance of the Contract by the **CONCESSIONAIRE** or by any Subcontractor. This coverage shall also provide protection against injuries to all employees of the **CONCESSIONAIRE** and the employees of any subcontractor. The required insurance shall be provided by companies or through sources approved by the Washington State Insurance Commissioner pursuant to Chapter 48.05 RCW.

B. Evidence of insurance shall be furnished to **WSF** prior to execution of the Contract. Such evidence, executed by the carrier's representative and issued to **WSF**, shall consist of an ACORD form Certificates of Insurance evidencing the minimum insurance coverages required under this Article. Acceptance by **WSF** of deficient evidence does not constitute a waiver of Contract requirements.

C. **Types of Insurance**

1. Commercial General Liability Insurance written under ISO form CG0001, or its equivalent, with minimum limits of \$1,000,000 each occurrence and \$2,000,000 in the aggregate for each policy year. Products and completed operations coverage shall be provided for a period of one (1) year following expiration or earlier termination of the Contract.

The Commercial General Liability insurance shall include coverage for the performance of all concession services under the Contract. Such insurance shall cover all operations by, or on behalf of, the **CONCESSIONAIRE** including all operations by a subcontractor. Such insurance shall cover: bodily injury and property damage liability, including coverage for premises and operations; products and completed operations; contractual liability; broad form property damage, including property in the **CONCESSIONAIRE'S** care, custody and control; and personal injury liability. **WSF** shall be named

1 as an additional insured in connection with the **CONCESSIONAIRE'S**
2 performance of the Contract.

3
4 2. Commercial Automobile Liability Insurance providing bodily injury and
5 property damage liability coverage for all owned and non-owned vehicles
6 assigned to or used in the performance of the Contract, for a combined single
7 limit of not less than \$1,000,000 each occurrence. **WSF** shall be named as an
8 additional insured in connection with the **CONCESSIONAIRE'S**
9 performance of the Contract.

10
11 3. Worker's Compensation Insurance for the **CONCESSIONAIRE'S** employees
12 engaged in performance of the Contract, as required by State law. The
13 **CONCESSIONAIRE** shall be responsible for Workers' Compensation
14 Insurance for any Subcontractor who provides services under the Contract.

15
16 4. United States Longshore and Harbor Workers' (U.S. L&H) Insurance and
17 contingent coverage for Jones Act (Marine Employers Liability) in
18 compliance with Federal Statutes, as applicable.
19

20 D. All insurance policies and Certificates of Insurance shall include a requirement
21 providing for a minimum of 45 days' prior written notice to **WSF** of any cancellation
22 or reduction of coverage.
23

24 E. The **CONCESSIONAIRE'S** failure to maintain the insurance as required shall
25 constitute a material breach of Contract upon which **WSF** may, after giving five (5)
26 working days' notice to the **CONCESSIONAIRE** to correct the breach, immediately
27 terminate the Contract or, at its discretion, procure or renew such insurance and pay
28 any and all premiums in connection therewith, with any sums so expended to be
29 repaid to **WSF** on demand.
30

31 F. Upon written request from **WSF**, following a claim that may result in the
32 **CONCESSIONAIRE'S** indemnification obligation, the **CONCESSIONAIRE** shall
33 provide to **WSF** copies of the policies required under this Article within five (5)
34 working days after the request.
35

1 G. If the **CONCESSIONAIRE** has not fully complied with the insurance requirements
2 in this Article, **WSF** may take any action available to it under any other provisions of
3 the Contract, or as otherwise provided in law.

4
5 H. The insurance coverage and other requirements in this Article shall not limit the
6 **CONCESSIONAIRE'S** responsibilities under this Contract including, but not
7 limited to, duties of liability and indemnity.

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10 **XXIII.**
11 **INDEMNIFICATION**
12

13 A. At its own expense, the **CONCESSIONAIRE** hereby agrees to indemnify and hold
14 harmless **WSF**, its, officers, agents, employees and assigns, from and against all
15 claims, demands, losses, costs, penalties, damages, judgments and suits at law or in
16 equity, of whatsoever nature ("actions"), brought against **WSF** arising from, in
17 connection with, or incident to the performance of, or failure to perform, the
18 provisions of this Contract by the **CONCESSIONAIRE**, its officers, agents,
19 employees or assigns. The **CONCESSIONAIRE** further agrees to defend **WSF** in
20 any litigation, including payment of any costs or attorney's fees, for any claims or
21 action commenced thereon arising out of or in connection with such acts or activities
22 authorized by this Agreement.

23
24 This indemnity obligation shall not include such claims, costs, damages or expenses
25 that may be caused by the sole negligence of **WSF**. Additionally, if the claims or
26 damages are caused by or result from the concurrent negligence of (a) the
27 **CONCESSIONAIRE**, its officers, agents, employees or assigns and (b) **WSF**, its
28 officers, agents, employees or assigns, and involve those actions covered by RCW
29 4.24.115, this indemnity provision shall be valid and enforceable only to the extent of
30 the negligence of the **CONCESSIONAIRE** or that of its officers, agents, employees
31 or assigns..

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2 **XXIV.**
3 **PAYMENT**
4

5 In exchange for the concession rights granted herein, the **CONCESSIONAIRE** agrees to
6 abide by the following payment provisions during the term of this Contract:
7

8 **A. Concession Fees**

- 9 1. For each full or partial calendar month of this Contract, the
10 **CONCESSIONAIRE** shall pay to **WSF** a concession fee equal to
11 _____ **Percent (____%) of all gross sales** for the News, Books and
12 Convenience Store service under this Contract.
13
14 2. The minimum monthly concession fee for the News, Books and Convenience
15 Store service shall be the greater of: (i) nine percent (9%) of gross sales,
16 excluding sales tax, unless the **CONCESSIONAIRE** proposes and **WSF**
17 accepts a higher concession fee. Effective at the beginning of year three of
18 the Contract Term, the minimum monthly Concession Fee shall be the greater
19 of nine percent (9%) of gross sales, excluding sales tax, or eighty percent
20 (80%) of the average monthly Concession Fees of the two (2) previous years.
21
22 3. The term “gross sales” as used herein shall mean the total dollar amount of
23 sales made with respect to the **CONCESSIONAIRE’S** operations conducted
24 in or from the Concession Premises, whether such activities shall be operated
25 by the **CONCESSIONAIRE** or by any subcontractor , or under any other
26 arrangement authorized by **WSF**, excluding, however, any sales or excise
27 taxes which are chargeable against the customer by the **CONCESSIONAIRE**
28 or by the subcontractor, if any, and further excluding refunds. Such gross
29 sales shall include all sales, whether at retail or otherwise, cash or credit,
30 irrespective of whether or not credit accounts are collected.
31

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2 **B. Other Service Contracts**

3 During the term of this Contract, **WSF** intends to implement other concession
4 services under separate contracts outside the scope of this Contract. Such services
5 may include:

- 6 1. on-board food, beverage and retail service;
7 2. on-shore food and beverage service;
8 3. on-shore fast food service;
9 4. on-board and on-shore cold beverage vending service;
10 5. on-board and on-shore hot beverage and snack vending service
11 6. on-board and on-shore game vending machines; and
12 7. other on-board and/or on-shore retail services.

13
14 In the event **WSF** implements any or all of these other concession services, **WSF** will
15 not consider any reduction in concession fees under this Contract.
16

17 **C. Due Date**

18 For each calendar month of this Contract, the **CONCESSIONAIRE** shall pay all
19 funds owed to **WSF** no later than the fifteenth (15th) calendar day of the following
20 month, addressing such payment to: Revenue Accountant, Washington State Ferries,
21 P.O. Box 3985, Seattle, Washington 98124-3985. Checks should be made payable to
22 Washington State Ferries, and each payment shall be accompanied by a financial
23 statement pursuant to Article XXV.
24

25 At some time during the term of this Contract, **WSF** may, in its sole discretion,
26 authorize the use of wire transfer or other method of electronic payment, if allowed
27 by the **WSF** accounting system.
28

29 **E. Interest**

30 The **CONCESSIONAIRE** shall pay interest monthly at the annual rate of twelve
31 percent (12%), or the maximum rate permitted by applicable law, whichever is less,
32 on all sums owing to **WSF** under this Contract, commencing on the date the same is
33 first due and payable.
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2 **XXV.**
3 **REPORTS**
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- 5 A. The **CONCESSIONAIRE** shall prepare and submit to **WSF**: (i) a monthly financial
6 statement signed by the CFO or Controller, in the form and format specified by **WSF**
7 including detail and sequence of items, to be submitted with the monthly concession
8 fee; (ii) reports of operating statistics as requested by **WSF**; and (iii) reports of any
9 subcontractors operating under the Contract. All such reports shall be available to
10 **WSF** in electronic format.
11

12
13 **XXVI.**
14 **ACCOUNTING PROCEDURES**
15

- 16 A. The **CONCESSIONAIRE** shall adopt bookkeeping or accounting methods that will,
17 in the opinion of **WSF**, comply with generally accepted accounting principles and
18 accurately disclose the **CONCESSIONAIRE'S** income and operating costs under
19 this Contract. If requested by **WSF**, the **CONCESSIONAIRE**, at its sole expense,
20 shall provide **WSF** an external certified public accountant's audit report on all of the
21 **CONCESSIONAIRE'S** concession services provided during the preceding Contract
22 year or the **CONCESSIONAIRE'S** most recent fiscal year.
23
- 24 B. The **CONCESSIONAIRE** shall make available for inspection all of its concession
25 operation books, accounts and records as may be reasonably required for audit
26 purposes. Such records shall be made available to **WSF** in Seattle for inspection and
27 audit at all reasonable times during the term of this Contract and for three (3) years
28 after final payment hereunder; **Provided**, if any litigation, claim or audit is started
29 before expiration of this three (3) year period, the records shall be retained until all
30 litigation, claims or audit findings involving the records have been resolved. The
31 **CONCESSIONAIRE** shall also permit **WSF** to check receipts from the
32 **CONCESSIONAIRE'S** cash registers during such period.
33
- 34 C. If at any time during the Contract term **WSF** requests reasonable changes in format,
35 type or detail of accounting data, the **CONCESSIONAIRE** shall make the requested
36 adjustments at no cost to **WSF**.

XXVII.
NON-DISCRIMINATION

A. Customers

Subject to applicable laws or regulations, the **CONCESSIONAIRE** agrees that no person, on the grounds of race, color, creed, national origin, marital status, age, sex, or the presence of any sensory, mental or physical handicap shall be denied the benefits of, or be otherwise unlawfully subjected to discrimination in their access to and use of the vending equipment on the Concession Premises.

B. Title VI

During the performance of this Contract, the **CONCESSIONAIRE**, for itself, its assignees and successors in interest, agrees as follows:

1. Compliance With Regulations

The **CONCESSIONAIRE** shall comply with the Regulations relative to nondiscrimination in federally assisted programs of the U.S. Department of Transportation (hereinafter referred to as USDOT), Title 49, Code of Federal Regulations, part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this Contract.

2. Nondiscrimination

The **CONCESSIONAIRE**, with regard to the work performed by it during the Contract, shall not discriminate on the grounds of race, color, sex, or national origin in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The **CONCESSIONAIRE** shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the Contract covers a program set forth in Appendix B of the Regulations.

1 3. Solicitations for Subcontracts, Including Procurement of Materials and
2 Equipment

3 In all solicitations either by competitive bidding or negotiations made by the
4 **CONCESSIONAIRE** for work to be performed under a subcontract,
5 including procurement of materials or leases of equipment, each potential
6 subcontractor or supplier shall be notified by the **CONCESSIONAIRE** of the
7 **CONCESSIONAIRE'S** obligations under this Contract and the Regulations
8 relative to nondiscrimination on the ground of race, color, sex, or national
9 origin.

10 4. Information and Reports

11 The **CONCESSIONAIRE** shall provide all information and reports required
12 by the Regulations or directives issued pursuant thereto, and shall permit
13 access to its books, records, accounts, other sources of information, and its
14 facilities as may be determined by the Washington State Department of
15 Transportation or the USDOT to be pertinent to ascertain compliance with
16 such Regulations, orders and instructions. Where any information required of
17 the **CONCESSIONAIRE** is in the exclusive possession of another who fails
18 or refuses to furnish this information, the **CONCESSIONAIRE** shall so
19 certify to the Washington State Department of Transportation, or the USDOT,
20 as appropriate, and shall set forth what efforts it has made to obtain the
21 information.

22 5. Sanctions for Noncompliance

23 In the event of the **CONCESSIONAIRE'S** noncompliance with the
24 nondiscrimination provisions of this Contract, the Washington State
25 Department of Transportation shall impose such Contract sanctions as it or the
26 USDOT may determine to be appropriate, including, but not limited to:

- 27
- 28 a. Imposition of fines or other financial remedies under the Contract until
29 the **CONCESSIONAIRE** complies, and/or;
- 30 b. Cancellation, termination, or suspension of the Contract, in whole or in
31 part.

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6. Incorporation of Provisions

The **CONCESSIONAIRE** shall include the provisions of paragraphs 1 through 5 in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.

The **CONCESSIONAIRE** shall take such action with respect to any subcontractor or procurement as the Washington State Department of Transportation or the USDOT may direct as a means of enforcing such provisions including sanctions for noncompliance; Provided, however, that in the event the **CONCESSIONAIRE** becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the **CONCESSIONAIRE** may request the Washington State Department of Transportation to enter into such litigation to protect the interests of the state and, in addition, the **CONCESSIONAIRE** may request the United States to enter into such litigation to protect the interests of the United States.

- D. The **CONCESSIONAIRE** shall use the Concession Premises in compliance with all other requirements imposed pursuant to any federal, state or municipal laws or regulations on discrimination.
- E. The breach of any of the above non-discrimination covenants shall be a material act of default entitling **WSF** to terminate this Contract in accordance with the procedures set forth herein.

1
2 **XXVIII.**
3 **DISPUTES**
4

5 **A. Administrative Review**

6 **WSF** and the **CONCESSIONAIRE** shall make a good faith effort to resolve any
7 dispute arising under this Contract. Any such dispute which is not resolved by
8 agreement between the parties shall be submitted in writing to **WSF's** Director / CEO
9 for administrative review. After giving full consideration to both parties' positions,
10 the Director / CEO shall issue a written, reasoned decision and mail or otherwise
11 furnish a copy thereof to both parties. The decision of the Director / CEO shall be
12 final and conclusive subject to the provisions in Paragraph B below. Pending the
13 administrative decision of a dispute hereunder, the **CONCESSIONAIRE** shall
14 proceed diligently with the performance of this Contract.
15

16 This administrative review process is an express condition precedent to the institution
17 of mediation pursuant to Paragraph B below.
18

19 **B. Mediation**

20 If either **WSF** or the **CONCESSIONAIRE** wishes to appeal an administrative
21 decision issued pursuant to Paragraph A above, it may not bring any claim against the
22 other party unless the claim is first presented for non-binding mediation before a
23 single mediator under the applicable Mediation Rules of the American Arbitration
24 Association. A representative of **WSF** and a representative of the
25 **CONCESSIONAIRE**, both having full authority to settle the claim, must attend the
26 mediation session. This provision requiring pre-filing mediation shall be
27 incorporated by reference in all agreements between the **CONCESSIONAIRE** and
28 its sub-contractors and suppliers. To the extent that any of the sub-contractors or
29 suppliers has any interest in the claim, their representatives, with full authority to
30 settle a claim on their behalf, shall also attend the mediation session.
31

32 Mediation is an express condition precedent to the institution of a claim on any
33 dispute arising under this Contract.
34

1
2 **C. Standard of Review**

3 On an appeal of any dispute resolution pursuant to Paragraph A above, **WSF** and the
4 **CONCESSIONAIRE** agree that the standard of review shall be whether the
5 administrative decision was arbitrary and capricious.
6
7

8 **XXIX.**

9 **FINES AND TERMINATION**

10
11 **A. Fines For Non-performance**
12

13 **WSF** may impose on the **CONCESSIONAIRE** fines not to exceed Five Hundred
14 Dollars (\$500.00) per violation per day (for each location where the violation
15 occurred), for the **CONCESSIONAIRE'S** or its subcontractor's failure to take
16 corrective action on a material breach of this Contract. Before any such fine may be
17 assessed, **WSF** shall issue a written notice to the **CONCESSIONAIRE**, specifying
18 the exact nature of the breach, the corrective action to be taken, and a reasonable
19 period of time in which to respond and complete such action. If the
20 **CONCESSIONAIRE** does not fully comply with the notice, without reasonable
21 justification, then **WSF** shall issue a written fine, payable with the next monthly
22 concession fee.
23

24 There shall be no limitation on the number and frequency of such fines, including
25 subsequent, cumulative fines for the same breach, if not timely corrected. All such
26 breaches which are not timely corrected shall be sufficient cause, singularly and
27 cumulatively, for default termination of this Contract, if deemed necessary by **WSF**.
28 Any such fine shall not be a prerequisite to, nor shall it affect, any other available
29 remedy arising from the **CONCESSIONAIRE'S** breach of this Contract.
30

1
2 **B. Termination for Convenience**

3
4 1. Notice of Termination

5 **WSF** may, in its sole discretion, terminate this Contract in whole or in part,
6 for convenience, upon at least six (6) months' prior written notice to the
7 **CONCESSIONAIRE**; **Provided**, no such termination may become effective
8 during the period May 1 through September 30, in any Contract year, due to
9 peak seasonal traffic.

10
11 2. Damages

12 If this Contract is terminated for convenience, in full or in part, the
13 **CONCESSIONAIRE** shall be liable only for payment in accordance with the
14 provisions of this Contract for the concession services provided prior to the
15 effective date of termination. If the termination is partial, payment for the
16 remaining concession services shall be unaffected by such termination.

17
18 In the event of such full or partial Contract termination, **WSF** shall not be
19 liable for the **CONCESSIONAIRE'S** incidental or consequential damages,
20 including, but not limited to, cost of inventory, lost profits and loss or
21 interruption of business, except as provided in Article XVIII.

22
23 **C. Termination for Default**

24
25 1. Notice of Default

26 **WSF**, by prior written notice, may terminate this Contract, in whole or in part,
27 for failure of the **CONCESSIONAIRE** to perform any material provision of
28 this Contract. Such notice shall specify the default(s) then outstanding, and
29 shall provide advance notice equal to the longer of: (i) fourteen (14) calendar
30 days; or (ii) a period of time determined by **WSF** as reasonably necessary to
31 remedy the default(s). **WSF'S** acceptance of **CONCESSIONAIRE'S**
32 payment or services for any period or periods after a default by the
33 **CONCESSIONAIRE** hereunder shall not be deemed a waiver of such default
34 unless **WSF** shall so intend and shall so advise the **CONCESSIONAIRE** in
35 writing. No waiver by **WSF** of any **CONCESSIONAIRE** default hereunder

1 shall be construed to be or act as a waiver of any subsequent default by the
2 **CONCESSIONAIRE**.

3
4 2. Termination and Extension

5 After the expiration of the default notice period, if one or more of the defaults
6 described in such notice then remains unremedied, this Contract shall
7 terminate without further notice and all rights of the **CONCESSIONAIRE**
8 shall cease. **WSF** may, in writing and at its option, extend the above period if,
9 in the sole judgment of **WSF**, an extension is justified.

10
11 3. Assignment for Benefit of Creditors, Insolvency, or Bankruptcy

12 To the extent permissible by law, appointment of a receiver to take possession
13 of the **CONCESSIONAIRE'S** assets, the **CONCESSIONAIRE'S**
14 assignment for benefit of creditors, or the **CONCESSIONAIRE'S** insolvency
15 or taking or suffering action under any Bankruptcy Act is a breach of this
16 Contract entitling **WSF** to terminate this Contract in accordance with the
17 provisions herein.

18
19 4. Performance by WSF

20 Notwithstanding the provisions in Paragraph B.1, if the **CONCESSIONAIRE**
21 defaults in the performance of any material provision of this Contract, and if
22 **WSF** deems that an emergency exists as a direct result of such default, **WSF**
23 may: (i) immediately terminate this Contract, in whole or in part, effective
24 upon the **CONCESSIONAIRE'S** receipt of written notice thereof; and (ii)
25 perform or cause to be performed such Contract provision(s). In such case,
26 **WSF** shall not be liable for damages by reason of such termination or entry
27 onto the Concession Premises. **WSF** may also avail itself of any other remedy
28 provided by law. Emergencies hereunder include, but are not limited to:
29 endangerment of life or property; failure to timely obtain insurance or
30 Contract Security, or failure to pay any taxes required by this Contract.

1
2 5. Damages

3 In the event **WSF** terminates this Contract, in whole or in part, for failure of
4 the **CONCESSIONAIRE** to perform a material provision herein, the
5 **CONCESSIONAIRE** shall be liable for Contract payments owed **WSF** to the
6 effective date of termination, plus **WSF'S** damages and expenses, including
7 but not limited to the additional cost, if any, of substitute, comparable
8 services, and the reduced revenues, if any, to **WSF**.
9

10
11 **XXX.**

12 **REDELIVERY OF PREMISES**

13
14 A. Upon the expiration or earlier termination of this Contract, the **CONCESSIONAIRE**
15 shall:
16

17 1. Immediately quit and surrender the Concession Premises and any other **WSF**
18 property in a systematic and orderly manner and redeliver such Premises and
19 property to **WSF** in as good state and condition as they were at the
20 commencement of the **CONCESSIONAIRE'S** operations under this
21 Contract, except for: (i) ordinary wear and tear; and (ii) damage not caused,
22 in whole or in part, by the **CONCESSIONAIRE'S** operations under this
23 Contract.
24

25 2. Unless otherwise agreed upon between the parties, remove from the
26 Concession Premises the **CONCESSIONAIRE'S** personal property that is
27 removable without causing damage to the Concession Premises or any other
28 **WSF** property or facilities thereon. Title to any such items left on the
29 Concession Premises after ten (10) days following expiration or earlier
30 termination of this Contract shall pass automatically to **WSF**; **Provided**, this
31 provision shall not apply to any of the **CONCESSIONAIRE'S** personal
32 property which **WSF** may allow to remain on the Concession Premises
33 pending sale to a successor concessionaire; but if such sale is not completed
34 within reasonable time, or upon earlier notice from **WSF**, the
35 **CONCESSIONAIRE** shall immediately remove all such personal property
36 from the Concession Premises and restore such Premises, as necessary.

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3. Remain fully liable for (ii) all clean-up resulting from the close-out activities specified in this Article; and (ii) the cost of restoring the Concession Premises and any other **WSF** property to the condition specified in Paragraph A.1.

XXXI.
NOTICE AND APPROVAL

Whenever notice is required to be given under this Contract, it shall be sent, facsimiled, or delivered in writing to the following respective addresses:

WSF: Washington State Ferries
2911 Second Ave.
Seattle, Washington 98121-1012

Attn.: Brian Volkert
Business Development Manager

CONCESSIONAIRE: _____

Attn.: _____

or to such other respective addresses as either party may hereafter designate in writing. Notice sent by mail shall be deemed to have been given three (3) days after proper mailing, and the postmark affixed by the U.S. Post Office shall be conclusive evidence of the date of mailing. Approvals, where required by this Contract, shall be effective in the same manner.

1
2 **XXXII.**
3 **SEVERABILITY**
4

5 If any term or provision of this Contract or the application thereof to any person or
6 circumstances shall, to any extent, be invalid or unenforceable, the remainder of this
7 Contract, or the application of such term or provision to persons or circumstances other than
8 those as to which it is held invalid or unenforceable, shall not be affected thereby and shall
9 continue in full force and effect.
10

11 **XXXIII.**
12 **GOVERNING LAW**
13

14 This Contract shall be deemed to be made in the County of Thurston, State of Washington,
15 and the legal rights and obligations of **WSF** and the **CONCESSIONAIRE** shall be
16 determined in accordance with the laws of the State of Washington. All legal actions in
17 connection with this Contract shall be brought in the County of Thurston, State of
18 Washington.
19

20 **XXXIV.**
21 **ENTIRE AGREEMENT**
22

23 A. This Contract, together with all attachments hereto, constitutes the entire agreement
24 between the parties. There are no terms, obligations, covenants or conditions other
25 than those contained herein. No modification or amendment of this Contract shall be
26 valid and effective unless evidenced by an agreement in writing.
27

28 B. To the extent that there is a conflict between this Contract, the
29 **CONCESSIONAIRE'S** Financial Proposal, its Concept / Service Proposal and/or the
30 project RFP package, the provisions of the respective documents shall govern in the
31 following order:
32

- 33 1. This Contract, together with any attachments;
 - 34 2. The project RFP package;
 - 35 3. The **CONCESSIONAIRE'S** Financial Proposal; and
 - 36 4. The **CONCESSIONAIRE'S** Concept / Service Proposal
- 37

1
2 **IN WITNESS WHEREOF**, the parties hereto have executed this Concession
3 Contract as of the day and year first written above.
4

5
6 **WASHINGTON STATE FERRIES**
7 **Washington State Department of Transportation**
8

9
10 BY: _____
11 Mike Thorne
12 Director / CEO
13
14

15
16 **CONCESSIONAIRE'S NAME**
17

18
19 BY: _____
20 Name
21 Title
22
23
24

25
26 Ipproved as to Form for WSF:
27

28 BY: _____
29 Andrew Scott
30 Assistant Attorney General
31

32 DATE: _____
33

STATE OF _____)
)
COUNTY OF _____) ss

On this day personally appeared before me _____, to me known to be the _____, acting on behalf of _____ the corporation that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute the said instrument.

GIVEN UNDER my hand and official seal this _____ day of _____, 2003.

NOTARY PUBLIC in and for the State of
_____, residing at _____.

My Commission Expires: _____

STATE OF WASHINGTON)
)
COUNTY OF KING) ss

On this day personally appeared before me **Michael G. Thorne**, to me known to be the Director / CEO of **WASHINGTON STATE FERRIES**, a division of the Washington State Department of Transportation, the agency that executed the within and foregoing instrument, and acknowledged the said instrument to be a free and voluntary act and deed of said agency for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute the said instrument.

GIVEN UNDER my hand and official seal this _____ day of _____, 2003.

NOTARY PUBLIC in and for the State of
Washington, residing at _____.

My Commission Expires: _____

WASHINGTON STATE FERRIES
NEWS, BOOKS & CONVENIENCE
CONCESSION CONTRACT

CONTRACT EXHIBITS

<u>Exhibit</u>	<u>Title</u>
A	CONCESSIONAIRE's Financial Proposal (incorporated by reference)
B.	CONCESSIONAIRE's Concept / Service Proposal (incorporated by reference)
C	WSF's Request For Proposals (incorporated by reference)